



ARKANSAS JUDICIARY

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Rule 44. Proof Of Official Record.

(a) Authentication.

(1) Domestic Record. An official record kept within the United States, or any state, district or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record having jurisdiction in the governmental unit in which the record is kept, authenticated by the seal of the court, or by any public officer having a seal of office and having official duties in the governmental unit in which the record is kept, authenticated by the seal of his office.

(2) Foreign Record. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication, or copy thereof, attested by a person authorized to make attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If a reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certificate or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Alternate Method for Certain Domestic and Foreign Records. The statutes, codes, written laws, executive acts, or legislative or judicial proceedings of any domestic or foreign jurisdiction or governmental unit thereof may also be evidenced by any publication proved to be commonly accepted as proof thereof in the tribunals having jurisdiction in that governmental unit.

(c) Lack of Record. A written statement that after diligent search, no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of the rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(d) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by an other method authorized by law.

Reporter's Notes to Rule 44: - 1. With the exception of minor wording changes, Rule 44 is

substantially identical to FRCP 44. These changes are lifted from superseded Ark. Stat. Ann. 27-2505 (Supp. 1975), which was taken largely from FRCP 44. These changes do not affect the substance of the Federal Rule.

2. In the last sentence of Section (a)(1), the phrase "of the district or political subdivision" which is found in the Federal Rule, is omitted and the phrase "having jurisdiction in the governmental unit" is inserted in lieu thereof. The effect of this change is to require that the judge making the certificate be the judge of a court which has jurisdiction.

3. Section (b) includes the alternate method of proving certain records previously found in superseded Ark. Stat. Ann. 27-2505(c) (Supp. 1975). Although this provision is not found in FRCP 44, it has been held that such proof is proper. *United States v. Aluminum Company of America*, 1 F.R.D. 71 (D.C. N.Y., 1939). Also, it should be noted that Rule 902 (5) of the Uniform Rules of Evidence permits the use of official publications without extrinsic evidence of authenticity.

Addition to Reporter's Notes, 1993 Amendment: - The changes made in subdivisions (a)(1) and (a)(2) are identical to those made in the corresponding federal rule in 1991. The amendment to subdivision (a)(1) strikes the references to specific territories, two of which are no longer subject to the jurisdiction of the United States, and adds a generic term to describe governments having a relationship with the United States such that their official record should be treated as domestic records.

The amendment to subdivision (a)(2) adds a sentence to dispense with the final certification by diplomatic officers when the United States and the foreign country where the record is located are parties to a treaty or convention that abolishes or displaces the requirement. In that event the treaty or convention is to be followed. This changes the former procedure for authenticating foreign official records only with respect to records from countries that are parties to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. It does not affect the former practice of attesting the records, but only changes the method of certifying the attestation. See generally Comment, 11 Harv. Int'l L.J. 476 (1970).

History Text:

History. Amended November 8, 1993, effective January 1, 1994

Associated Court Rules:

Rules of Civil Procedure

Group Title:

VI. Trials

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